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**ATTORNEYS FOR DEFENDANTS JINGIT  
 LLC, JINGIT HOLDINGS, LLC, JINGIT  
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 ROOKE, JOE ROGNESS, SAM ASHKAR,  
 PHIL HAZEL, HOLLY OLIVER, SHANNON  
 DAVIS, JUSTIN JAMES, CHRIS OHLSEN,  
 DAN FRAWLEY, DAVE MOOREHOUSE, II,  
 TONY ABENA, CHRIS KARLS, JOHN E.  
 FLEMING, AND MUSIC.ME, LLC**

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION**

Indiezone, Inc., a Delaware corporation, and EoBuy,  
 Limited an Irish private limited company,

Plaintiffs,

vs.

Todd Rooke, Joe Rogness, Phil Hazel, Sam Ashkar,  
 Holly Oliver and U.S. Bank, collectively the ***RICO***  
***Defendants***;

Jingit LLC, Jingit Holdings, LLC, Jingit Financial  
 Services LLC., Music.Me, LLC., Tony Abena, John  
 E. Fleming, Dan Frawley, Dave Moorehouse II,  
 Chris Ohlsen, Justin James, Shannon Davis, Chris  
 Karls in their capacities as officers, agents and/or  
 employees of Jingit LLC, ***Defendants in Negligence***,

Case No: 4:13-CV-04280 YGR/EDL  
 Hearing Date: April 1, 2014  
 Hearing Time: 2:00 p.m.  
 Place: Oakland Courthouse  
 Courtroom: 5, Second Floor

**DEFENDANTS' MEMORANDUM IN  
 OPPOSITION TO PLAINTIFFS'  
 MOTION TO AMEND THEIR  
 SUMMONS AND COMPLAINT**



1 *and Aiding/Abetting;*

2 Wal-Mart, General Electric, Target, DOE(s) and  
3 ROE(s) 1 through 10, *Defendants in Negligence*  
4 *Secondary-Vicarious Infringement,*

5 Defendants.

## 6 **INTRODUCTION**

7 After admitting that current plaintiff eoBuy, Limited is a dissolved Irish corporation that  
8 lacks capacity to bring suit, Plaintiffs now seek leave to amend their Complaint to add a new  
9 purported entity that they say is an Irish company named “eoBuy Ventures Limited.” However, the  
10 purported Irish entity that they seek to add as a plaintiff, “eoBuy Ventures Limited,” also *does not*  
11 *exist*. Therefore, the proposed amendment would be futile, and this Court should deny Plaintiffs’  
12 motion.

## 13 **ARGUMENT**

14 **This Court Should Deny Plaintiffs’ Motion to Amend Their Complaint Because the**  
15 **Proposed New Plaintiff Does Not Exist; Therefore, Amendment Would be Futile.**

16 The complaint filed in this action named two plaintiffs, Indiezone, Inc. and eoBuy, Limited.  
17 (Compl., ECF 1, Caption, p. 1 & ¶ 26.) The Jingit Defendants<sup>1</sup> brought a motion to, *inter alia*,  
18 dismiss eoBuy, Limited because, as a dissolved Irish corporation, it lacks capacity to bring suit under  
19 governing Irish law.<sup>2</sup> (Mot. of Defs. to Compel Arbitration, ECF 29, Sec. II; Declaration of Brian  
20 Walker (“Walker Decl.”), ECF 30, ¶¶ 5-9, Exs. A & B.) In response, Plaintiffs *admitted* that eoBuy,  
21 Limited had dissolved in 2008 and therefore lacked capacity to bring suit. (“There is no genuine  
22

23 <sup>1</sup> “Jingit Defendants” are Todd Rooke, Joe Rogness, Phil Hazel, Sam Ashkar, Holly Oliver,  
24 Jingit, LLC, Jingit Holdings, LLC, Jingit Financial Services, LLC, Music.Me, LLC, Tony Abena,  
25 John E. Fleming, Dan Frawley, Dave Moorehouse II, Chris Ohlsen, Justin James, Shannon Davis  
and Chris Karls. Defendant U.S. Bank also joined the Jingit Defendants’ Motion to Dismiss. (ECF  
35.)

26 <sup>2</sup> Defendants also note that the corporate status of plaintiff Indiezone, Inc. had been forfeited  
27 under Delaware law since June 11, 2009, and was only recently reinstated on January 24, 2014. *See*  
28 Declaration of Joseph P. Ceronky, ECF 62-1 and 62-2, Exs. A & B.) It appears that Indiezone’s  
reinstatement of its corporate status, however, is retroactively effective. *See* Del. Code Ann. Title 8,  
§ 312(e).



1 contest that ... eobuy Limited ... was dissolved on April 1, 2008.” Pls.’ Mem. in Opp’n, ECF 54, p.  
 2 9; *see also* Declaration of Conor Fennelly (“Fennelly Decl.”), ECF 54-1, ¶ 1.) Plaintiffs now bring  
 3 this motion seeking leave to amend their Complaint “to add or correct the corporate entity naming  
 4 eoBuy Ventures Limited ... as the intended Plaintiff....” (Declaration of Douglas R. Dollinger  
 5 “Dollinger Decl.,” ECF 57-1, p. 2.)  
 6

7 Plaintiffs represent and have submitted a declaration of Conner Fennelly, the CEO of  
 8 plaintiff Indiezone, declaring that eoBuy Ventures Limited is “a company formed under the laws of  
 9 Ireland,” which “has been doing business as eoBuy since August 2008....” (*Id.* p. 3; Fennelly Decl.,  
 10 ECF 54-1, ¶ 3.) The proposed amended complaint seeks to add the purported entity eoBuy Ventures  
 11 Limited in place of the original plaintiff eoBuy, Limited, but it otherwise repeats and leaves  
 12 unchanged all substantive allegations set forth in the original Complaint and basis for the claims of  
 13 this “eoBuy” plaintiff. (*See id.*, pp. 2-3, and *compare* Compl., ECF 1, p. 1, caption & ¶ 26, with  
 14 proposed amended complaint, ECF 57-1, Ex. A, p. 1, caption & ¶ 26.) Thus, in the proposed  
 15 amended complaint, all background facts formerly attributed to eoBuy, Limited in the original  
 16 complaint would now be attributed to the purported entity eoBuy Ventures Limited, even if those  
 17 alleged facts occurred before eoBuy Ventures Limited was supposedly organized in 2008 and/or  
 18 could only apply to the dissolved eoBuy, Limited entity. (*See, e.g.*, Compl., ECF 1, ¶¶ 77-80, 100-  
 19 111, 122-124.)  
 20  
 21

22 Nonetheless, routine investigation of the public Irish Registrar reveals that the purported  
 23 entity eoBuy Ventures Limited does not exist; no such company was ever formed under the laws of  
 24 Ireland as Plaintiffs and Mr. Fennelly now claim. (*See* Supplemental Declaration of Brian Walker,  
 25 “Supp. Walker Decl.,” ECF 61, ¶¶ 3-4, Ex. A.)<sup>3</sup> Nor is there a record of any other entity organized  
 26

27 <sup>3</sup> The fact of eoBuy Ventures Limited’s nonexistence is reflected in the public records of the  
 28 Irish Registrar, and may also be independently verified by the Court by entering the name “eoBuy”  
 into the Registrar’s public website, available at [www.cro.ie/search](http://www.cro.ie/search). (Supp. Walker Decl., ECF 61,  
 DEFS.’ MEM. IN OPP’N TO PLS.’ MOT. TO  
 AMEND SUMMONS AND COMPLAINT  
 - Case No: 4:13-CV-04280 YGR/EDL



1 under the laws of Ireland with the term “eoBuy” as part of its name with the exception of the  
 2 dissolved plaintiff eoBuy, Limited. (*Id.* ¶ 5, Ex. B.)<sup>4</sup> For this simple reason, the proposed  
 3 amendment to add eoBuy Ventures Limited as a plaintiff would be futile because it too is non-  
 4 existent and thus lacks capacity to sue.

5 While leave to amend under Rule 15(a) “shall be freely given when justice so requires,” the  
 6 prerogative is not limitless. “The power to grant leave to amend ... is entrusted to the discretion of  
 7 the district court, which determines the propriety of a motion to amend by ascertaining the presence  
 8 of any of four factors: bad faith, undue delay, prejudice to the opposing party, and/or futility.” *Serra*  
 9 *v. Lappin*, 600 F.3d 1191, 1200 (9th Cir. 2010) (internal quotations omitted) (affirming denial of  
 10 leave to amend based on futility). “However, each [factor] is not given equal weight. Futility of  
 11 amendment can, by itself, justify the denial of a motion for leave to amend.” *Bonin v. Calderon*, 59  
 12 F.3d 815, 845 (9th Cir. 1995) (denying leave to amend based on futility). Here, futility justifies the  
 13 denial of Plaintiffs’ motion for leave to amend because proposed plaintiff eoBuy Ventures Limited  
 14 does not exist and thus cannot have capacity to sue. *Cf. In re Flash Memory Antitrust Litig.*, No. C  
 15 07-0086, 2010 U.S. Dist. LEXIS 66466, at \*36-39 (N.D. Cal. June 9, 2010) (denying leave to amend  
 16 on futility grounds because corporation sought to be joined was dissolved and therefore lacked legal  
 17 capacity to sue). This Court should deny Plaintiffs’ motion.

## 18 CONCLUSION

19 For the foregoing reasons, the Jingit Defendants respectfully ask this Court to deny Plaintiffs’  
 20 Motion to Amend Their Summons and Complaint.

21 ¶ 4.)

22 <sup>4</sup> The Irish Registrar also shows that Conor Fennelly recently registered the trade name  
 23 “eobuy” on February 21, 2014, as doing business for an Irish company called “Laraghcon Chauffeur  
 24 Drive Limited.” (Supp. Walker Decl., ECF 61, ¶ 6, Ex. C.) Laraghcon Chauffeur Drive Limited  
 25 appears to be a car service in Ireland also doing business under the trade name “Lucan Taxi.” See  
 26 www.lucantaxi.com.



1  
2 Dated: March 7, 2014

**MASLON EDELMAN BORMAN & BRAND, LLP**

3 By: /s/ Joseph P. Ceronsky  
4 Joseph P. Ceronsky (MN Bar No. 391059)  
5 (admitted *Pro hac vice*)

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11 **JUSTIN JAMES, CHRIS OHLSSEN, DAN**  
12 **FRAWLEY, DAVE MOOREHOUSE II, TONY**  
13 **ABENA, CHRIS KARLS AND JOHN E.**  
14 **FLEMING**

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